IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1913 OF 2004

Ganesh Pandharinath Zite .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.R.S.Datar for the petitioners

Mr.C.R.Sonawane, A.G.P. for the respondents

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ

DATED: 15TH SEPTEMBER, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. In the present petition, the only issue raised by the petitioner is that the Caste Scrutiny Committee while passing the impugned order has not followed the principles of natural justice and has not given adequate opportunity of being heard before invalidating the caste certificate of the petitioner. Petitioner claims that he belongs to the scheduled tribe 'Mahadeo Koli'.

2. On 23rd June 2000, the petitioner joined the services of respondent no.1 under reserved category of scheduled tribe. The caste claim of the petitioner was forwarded for scrutiny to the respondent no.2 committee by the employer. On 5th September 2003, an enquiry was conducted by Vigilance Officer and the report was submitted to the 2nd respondent committee.

3. On 20th September, 2003, a show cause notice was issued to the petitioner by the committee seeking his explanation as to why his caste claim should not be rejected. By a letter dated 30th September 2003 the petitioner sought further time for filing a reply which was granted by the Committee. However, in place of hearing the petitioner an order came to be passed on 29th November 2003 and was forwarded to the petitioner on 3rd February 2004. By the said order the caste claim of the petitioner has been rejected and the caste certificate has been held to be invalid.

4. The learned counsel for the petitioner has pointed out that in the order dated 29th November 2003, it is stated that the petitioner was issued a show cause notice on 20th September 2003 and was asked to submit a reply within a period of 10 days. Petitioner was also given an opportunity of hearing on 30th September 2003 but petitioner applied for an adjournment by making a written application. The respondent no.2 committee granted the adjournment but new date of the hearing was not communicated to the petitioner. The order recites that a notice was issued on 3rd November 2003 after granting one months adjournment but none appeared and thus the matter was heard ex-parte on 17th November 2003 on the basis of such an ex-parte hearing the caste claim of the petitioner is invalidated.

5. Without going into the merits of the matter we directed the learned A.G.P. appearing for the State Government to show the acknowledgment of the notice dated 3rd November 2003 which would indicate that the petitioner was duly served with the said

notice. However, the learned A.G.P. has fairly conceded that respondents do not have an acknowledgment of the petitioner indicating receipt of the said notice dated 3rd November 2003. In view of aforestated reply, we are of the view that the matter requires to be remanded back to the 2nd respondent committee for deciding the same afresh after giving the petitioner an opportunity of hearing for establishing his claim.

6. We accordingly quash and set aside the said order dated 29th November 2003 and remand the matter back to the authorities for deciding the same afresh on merits after giving a fresh notice of hearing to the petitioner. It is needless to state that the 2nd respondent committee will pass a speaking order. In an event if the order passed is adverse to the petitioner and his caste certificate is invalidated then the said order shall not be given effect to for a period of 4 weeks from the date of communication of the same. We dispose of the petition accordingly. However, there shall be no order as to costs.